

Date of decision: 24-4-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K.KESHOTE, J  
(24-4-1996)

Mr. C.L. Soni for the petitioner.  
Mr. D.A. Bambania for the respondents.

ORAL JUDGMENT:

Rule. Mr. D.A. Bambania waives service of rule on behalf of the respondents. At the request of the counsel for the parties the matter is taken up for final hearing.

2. Heard the learned counsel for the parties.

The petitioner is admittedly serving as junior clerk in the office of respondent No.2 since 8-1-1962. By now he has completed more than 33 years of service. It is the admitted case of the respondents in the reply that the appointment of the petitioner was regularised under Central Recruitment Scheme with effect from 17-4-1970. The claim of the petition in the writ petition is regarding grant of benefit of higher grade pay-scale as per the circular dated 5-7-1991 issued by the Government. The petitioner claims the benefit of this circular with effect from 1-6-1987. The benefit of this circular was not given to the petitioner on the ground that he has not passed the departmental examination applicable for promotion to the next higher post. The contention of the petitioner is that the petitioner was not required to pass the examination as the employees who had completed 45 years of age as on 5-7-1991 are exempted from passing the same.

2. The contention of the learned counsel for the respondents that the exemption did not apply to the petitioner as he has not passed the Bombay Accounts Clerk Examination which was essential for retention in service as well as for promotion to the higher posts. I do not find any substance in the contention of Mr. D.A. Bambania, learned counsel for the respondents. When the services of the petitioner were admittedly regularised from 17-4-1970 passing of Bombay Accounts Clerk Examination has no relevance. In the facts and circumstances of the case, exemption which has been granted from passing the examination for promotion is applicable to the petitioner. It is a case where the respondents have acted arbitrarily and a low paid employee has been compelled to approach this Court for the relief which should have been granted by the respondents at their end.

3. In the result the writ petition is allowed. It is declared that the petitioner is entitled to the benefits of higher pay-scale on the basis of Government Circular dated 5-7-1991 with effect from 1-6-1987. The respondents are directed to pass necessary order for giving the benefit of higher pay-scale to the petitioner from 1-6-1987 within a period of two months from the date of receipt of certified copy of this order. The arrears of benefits payable to the petitioner shall be determined and paid to the petitioner within two months thereafter. As the petitioner has been deprived of the benefits of higher pay-scale the respondents

are directed to pay to the petitioner interest at the rate of 12% per annum on the arrears from the due date till the date of payment. As the petitioner has been unnecessarily harassed, the respondents are directed to pay to him Rs.2,000/- (Rupees two thousand) by way of cost of this litigation. Rule made absolute accordingly.